



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	30 (Commonwealth Transportation Board)
VAC Chapter Number:	24 VAC 30-41-10 et seq.
Regulation Title:	Rules and Regulations Governing Relocation Assistance
Action Title:	Repeal 24 VAC 30-40-10 et seq. and Replace It with an New Regulation 24 VAC 30-41-10 et seq. Under Same Title
Date:	September 27, 2000

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

In acquiring the rights of way necessary for the construction, reconstruction, alteration, maintenance, and repair of the public highways of the Commonwealth, the Virginia Department of Transportation (VDOT) must often displace individuals, families, businesses, farms, and non-profit organizations. The purpose of the *Rules and Regulations Governing Relocation Assistance* is to ensure to the maximum extent possible the prompt and equitable relocation and reestablishment of these displacees. To accomplish this purpose, VDOT believes that a uniform policy is necessary.

During 1999, VDOT's Right of Way and Utilities Division prepared a comprehensive revision to the existing regulation, which had not been revised since 1990. Due to the extensive nature of the proposed revisions to the existing regulation, VDOT

proposed to repeal the existing regulation and replace it with a new one under the same title. VDOT believes that the substantial revisions to this policy embodied in the final replacement regulation will continue to ensure adequate relocation services and will provide moving, replacement housing, and other expense payments so that individuals will not suffer disproportionate injuries as a result of the highway improvement programs. The contemplated regulatory action repeals the existing regulation (24 VAC 30-40-10 et seq.). It also simultaneously promulgates a replacement regulation (24 VAC 30-41-10 et seq., under the same title), which has the following differences from the existing regulation:

- Specific substantive changes in replacement regulation due to changes in policy, law, etc.: On the advice of the Office of the Attorney General, the policy on Relocation Appeals has been revised to require the presence of a court reporter. The definition of “persons who do not qualify as a displaced person” has been revised due to a change in federal law. “Self-Move” procedures have been added to the section on “Actual, Reasonable Moving Expenses.” The process for sending vacating notices to displacees in § 24 VAC 30-40-300 has been revised to permit them to be received earlier, thereby providing more timely notification to displacees, and allowing VDOT to maintain more projects in an active status.
- Other substantive changes not associated with changes in policy, law, etc.: Text has been reformatted and rewritten in a less legalistic way to facilitate understanding of the policies and procedures discussed. Sections have been consolidated, re-ordered, or reduced in size to improve ease of understanding. Likewise, the list of definitions has been revised to omit unnecessary or obsolete terms, add new ones, or re-state meanings. An existing policy concerning “Section 8 Housing” has been added to the regulation. An existing policy regarding displacees’ right to judicial review after final appeal determinations is required to be explicitly disclosed to displacees. Examples of payment calculations have been added in sections relating to replacement housing to clarify procedures. Finally, a Guidance Document has been created to assist VDOT employees in interpreting the regulation.

The final regulation incorporates few substantive changes from those discussed above. These changes are discussed elsewhere in this document. The Commonwealth Transportation Board (CTB) and VDOT believe that this regulatory action fulfills an important and essential governmental function: the facilitation of the Commonwealth’s construction and maintenance programs while preserving the physical and economic well-being of displaced individuals, families, businesses, and nonprofit organizations affected by these activities. In addition, providing a minimum level of decent, safe, and sanitary housing to displacees may improve their living standards, which will help preserve the safety and welfare of the public as a whole.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

By resolution dated September 20, 2001, the CTB repealed the existing *Rules and Regulations Governing Relocation Assistance* (24 VAC 30 40-10 et seq.) and adopted the replacement *Rules and Regulations Governing Relocation Assistance* (24 VAC 30 41-10 et seq.), to become effective as provided for by the Administrative Process Act and other directives and procedures established by DPB, the Registrar, and the Governor. A paper copy of the resolution will be submitted as part of the Regulatory Package.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

This regulation is based on the following federal and state laws:

- Public Law 91-646, as amended (42 USC, § 4601 et seq.) (federal law);
- 49 CFR Part 24 (federal regulation to implement pertinent amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970);
- Code of Virginia - §§ 33.1-12 (5) and 25-253.

The Commonwealth Transportation Board (CTB), the policy board charged with oversight of VDOT activities, has discretionary power under § 33.12 (5) to comply fully with the provisions of current or future federal aid acts, and § 25-253 authorizes all state agencies to promulgate rules and regulations necessary to carry out the provisions of § 25-235 et seq. (The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1972). Federal regulations and related federal law require that relocation services be provided to eligible recipients.

Since they primarily involve revising text order and content to improve clarity, or implement more efficient processes and procedures as permitted by federal law, the

changes to the replacement regulation do not exceed federal minimum requirements. However, federal law and state law do apply different maximum amounts for reestablishment expenses: \$10,000 (federal) vs. \$25,000 (state) and In Lieu of Payment: \$20,000 (federal) vs. \$50,000 (state). The changes made to the final regulation since its publication in existing form are largely editorial ones related to inconsistencies in style or correcting technical errors, and VDOT has met with the Registrar's Office to discuss changes of this type. However, changes were made to 24 VAC 30-41-30 ("Definitions") and 24 VAC 30-41-160 ("90-Day Assurance Notice") in the final regulation to make them comply more closely with federal regulations, so these changes do not exceed federal minimum requirements.

The Office of the Attorney General (OAG) reviewed the replacement regulation at the proposed stage and prior to its review in final form by the Commonwealth Transportation Board. The OAG re-affirmed a prior opinion in correspondence dated September 4, 2001, that the final replacement regulation comports with applicable state and federal laws and that the Commonwealth Transportation Board possesses the authority to repeal the existing regulation 24 VAC 30-40-10 et seq. and adopt the final replacement regulation 24 VAC 30-41-10 et seq. under the same regulation title. A paper copy of the opinion will be submitted as part of the Regulatory Package.

Copies of the citations referenced above can be found via the following Internet sites:

Federal: http://www.access.gpo.gov/su_docs/

State: <http://leg1.state.va.us/lis.htm>

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

In acquiring the rights of way necessary for the construction, reconstruction, alteration, maintenance, and repair of the public highways of the Commonwealth, it often becomes necessary to displace individuals, families, businesses, farms, and non-profit organizations. The purpose of the final replacement regulation is to permit VDOT to establish a uniform regulation concerning the prompt and equitable relocation and reestablishment of these displacees that is more streamlined, easier to understand and administer, and promotes efficiency. This final regulation will ensure adequate relocation services and will provide moving, replacement

housing, and other expense payments so that individuals will not suffer disproportionate injuries as a result of the highway improvement programs.

The final replacement regulation is intended to streamline certain procedures to improve operational efficiency and effectiveness. It revises and reformats text to make the policies and procedures more understandable to both displacees eligible for these services, as well as the VDOT personnel who will implement and interpret the regulation. Rather than a remedy to address one or more problems, the replacement regulation represents an example of VDOT's ongoing efforts to improve the quality and timeliness of its transportation services.

Therefore, VDOT believes that, in facilitating the provision of decent, safe, and sanitary facilities for families and businesses relocated due to highway projects, the final replacement regulation is essential to the protection of the health, safety, and welfare of the citizens, and is an essential part of VDOT's transportation functions.

The goals of the final replacement regulation are:

- To comply with the requirements of federal and state law;
- To ensure that the implementation of the regulations is uniform and consistent statewide;
- To administer relocation services to displacees in a fair, impartial manner;
- To ensure that the provisions of the regulations are clearly understood by all participants;
- To receive satisfactory audit reports; and
- To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

The new Periodic Review period for this regulation will commence September 30, 2004.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

As a result of a comprehensive review of instructional manuals, memoranda, policies, and procedures used in the Right of Way and Utilities Division, VDOT proposes to replace the existing regulation with a substantially rewritten regulation that incorporates the following changes, which have been discussed as part of the documentation accompanying the proposed version of the replacement regulation:

- Text has been reformatted and rewritten in a less legalistic way to facilitate understanding of the policies and procedures discussed;

- Examples of payment calculations have been added in sections relating to replacement housing to clarify procedures;
- Revisions to the process as permitted by 49 CFR Part 24 24.203 (c) (3) for sending vacating notices to displacees specified in § 24 VAC 30-40-300; this change will permit them to be received earlier, thereby providing more timely notification to displacees, and allowing VDOT to maintain more projects in an active status; and
- Creation of a Guidance Document to assist VDOT employees in interpreting the regulation.

VDOT did not receive any public comment during the public comment period, nor did anyone provide input at the public hearing held in July of 2001. During a final review prior to CTB approval, however, VDOT made amendments to two sections to make them conform more closely to federal regulations. VDOT also met with personnel from the Registrar’s Office to verify that these changes were acceptable. These changes are discussed in greater detail below. Some minor changes were also made to correct inconsistencies in style or references to other parts of the regulation, and to incorporate an effective date for the Guidance Document, but these do not affect the content of the regulation.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term “issues” means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Because the proposed and final replacement regulation has revised existing provisions to improve the quality and timeliness of relocation services, affected persons and businesses will benefit from implementation of the new provisions of the regulation. Both VDOT personnel and those affected by the regulation will benefit from the final replacement regulation, which has sample calculations and is written in a less legalistic manner. These features will make the final regulation easier to administer and understand. Therefore, there will be no disadvantages to either the Commonwealth or the public in implementing the final replacement regulation approved by the CTB.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

Other than minor changes to correct inconsistencies in style or references to other parts of the regulation, and to incorporate an effective date for the Guidance Document (which do not affect the content of the regulation), VDOT made the following changes to the regulation since the proposed stage:

- 24 VAC 30-41-30 (“Definitions”) – revised definitions of “business” and “contributes materially” to conform to that contained in the Federal Register, Vol. 54, No. 40, Section 24.2 (c) and 24.2 (e); and
- 24 VAC 30-41-160 (“90-Day Assurance Notice”) - revised procedures associated with “relocation notices” to match those contained in the Federal Register, Vol. 54, No. 40, Section 24.203 (a).

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

VDOT received no public comment during the public comment period. A copy of the transcript from the public hearing is available for inspection.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

To give a comprehensive view of the scope of changes involved in repealing and replacing 24 VAC 30-40-10 et seq. with a new regulation, VDOT will detail changes at both the proposed and final versions of 24 VAC 30-41-10 below. Table A discusses specific changes (included in previous documentation with the Proposed regulation) made in the replacement regulation 24 VAC 30-41-10 et seq. that differ from the existing 24 VAC 30-40-10 et seq.:

TABLE A – Explanation of Regulatory Changes Made in 24 VAC 30-41-10 et seq. Previously Discussed At the Proposed Stage

Existing regulation 24 VAC 30-40-10 et seq.	Replacement regulation 24 VAC 30-41-10 et seq.	Nature of change
Various sections	Part 1, 24 VAC 30-41-70	Reordered and consolidated references to Civil Rights and Equal Opportunity governing program services into single section at beginning after “Definitions”. In the existing regulation Civil Rights and Equal Opportunity was referenced in several different sections. The replacement

Existing regulation 24 VAC 30-40-10 et seq.	Replacement regulation 24 VAC 30-41-10 et seq.	Nature of change
		regulation has one section to cover all.
24 VAC 30-40-30	24 VAC 30-41-30	Revised list of “Definitions” to include additional information on some terms and move others to sections of the manual where definition is pertinent to discussion of policy; Amended definition of “Persons who do not qualify as a displaced person” to include “A person determined to be not lawfully present in the United States” – Policy change due to change in federal law 49 CFR Part 24, § 24.2.
Part II, 24 VAC 30-40-40 through 150	24 VAC 30-41-30	Deleted entire Part II “Decent, Safe, and Sanitary Housing Standards” and made them a part of “Definitions”
24 VAC 30-40-310	24 VAC 30-41-90	Added to “Final Appeal” the requirement that a “Court Reporter will be present to record and provide a transcript of all information presented at the hearing should the case be heard in Court. This is a policy change recommended by the Attorney General’s office. Also added a statement to advise the displacee of the right to seek judicial review, which must be filed with the court within 30 days after receipt of the final appeal determination. This is existing policy which is being made a part of written policy at the recommendation of the Office of the Attorney General.
24 VAC 30-40-500	24 VAC 30-41-270	Revision to Actual, Reasonable Moving Expenses to include a self-move – Policy change as permitted by 49 CFR Part 24.301. There is a need for this type of moving cost when the displacee chooses not to have a commercial mover and the fixed per room schedule is not a sufficient amount to cover the move.
N/A	24 VAC 30-41-430, 440, 450, 460, and 490	Examples of payment calculations have been added in sections relating to replacement housing in Part 8.
24 VAC 30-40-300	24 VAC 30-41-160	Revisions to the process as permitted by 49 CFR Part 24 24.203 (c) (3) for sending vacating notices to displacees; this change

Existing regulation 24 VAC 30-40-10 et seq.	Replacement regulation 24 VAC 30-41-10 et seq.	Nature of change
		will permit them to be received earlier, thereby providing more timely notification to displacees, and allowing VDOT to maintain more projects in an active status.
N/A	24 VAC-30-41-580	Added Section 8 housing requirements. This is not a policy change. This is an existing regulation that is being added to written policy.
Part VI, 24 VAC 30-40-1010 through 1170	Part 10, 24 VAC 30-41-590 through 640	Reduced number of sections addressing “Mobile Homes” from 17 to 6; redrafted part in terms of eligibility, requirements to receive payment, etc. No policy change or new regulations.
Part VII, 24 VAC 30-40-1180 through 1300	Part 11, 24 VAC 30-41-650 through 710	Reduced number of sections addressing “Last Resort Housing” from 13 to 6; redrafted part in terms of eligibility, requirements to receive payment, etc. No policy change or new regulations.
24 VAC 30-40-210 through 240	Part 12	More detailed identification of documentation requirements, including reports and audits, consolidated together.
N/A	<i>Guidance Document for Determination of Certain Financial Benefits to Displacees</i>	Separate document to assist VDOT employees in interpreting the regulation for affected parties

Other than minor changes to correct inconsistencies in style or references to other parts of the regulation, and to incorporate an effective date for the Guidance Document (which do not affect the content of the regulation), VDOT made the following changes to the final regulation since the proposed stage that are substantive:

TABLE B – Explanation of Substantive Changes Made to Final Regulation Since Publication in Proposed Form

Section of 24 VAC 30-41-10 et seq.	Change and Reason Made
24 VAC 30-41-30 (“Definitions”)	Proposed regulation submitted to the Registrar had definition of “business” written as it is in the Federal Register, Vol. 54, No. 40, Section 24.2 (c) with the words “or” connecting criteria defining the term, but these were not published; after consultation with the Registrar, it was agreed that these words made it clear that not all the criteria had to be met
24 VAC 30-41-30 (“Definitions”)	Proposed regulation submitted to the Registrar had definition of “contributes materially” written as it is in the Federal Register, Vol. 54, No. 40, Section 24.2 (a) (3) with the word “or” connecting criteria defining the term, but these were not published; after consultation with the Registrar, it was agreed that this word made it clear that not all the criteria had to be met
24 VAC 30-41-160 (“90-Day Assurance Notice”)	Revised text was changed to permit 90-day notice to be issued “on or after” rather than “after” a written offer for the property and the replacement housing payment offer has been made; text was added to provide for notification of a specific date by which the property will be vacated at least 30 days in advance; these changes bring VDOT’s procedure into line with the procedures outlined in the Federal Register, Vol. 54, No. 40, Section 24.203 (a). Text was also inserted to clarify the type of notice being sent. These changes will facilitate the ability of displacees to make decisions concerning relocation, since they will have more specific information.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulation is not anticipated to affect the authority or rights of parents with respect to their children, nor is it anticipated to have any effects on the marital commitment or family income. However the regulation may have a positive effect on self-pride and the assumption of responsibility for oneself by ensuring that certain housing standards are maintained with respect to decent, safe, and sanitary requirements. In fact, depending on economic circumstances of specific affected families, this regulation could improve living standards.